

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GORDON R. SIMMONDS,
TDCJ-CID NO.932489,
Plaintiff,

v.

CALVIN L. BLAKE, JR.,
Defendant.

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CIVIL ACTION NO. H-05-4254

OPINION ON DISMISSAL

Plaintiff, a state inmate incarcerated in the Texas Department of Criminal Justice–Correctional Institutions Division, has filed a civil rights complaint (Docket Entry No.1). Plaintiff has also filed an application to proceed *in forma pauperis*. (Docket Entry No.2). A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate’s privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff’s complaint does not indicate that he is any danger.

Plaintiff’s litigation history reveals that he falls within the provisions of section 1915(g). Plaintiff has filed at least three other lawsuits in federal courts while incarcerated in prison or a detention facility. All three have been dismissed as either frivolous, malicious, or for failure to state a claim upon which relief may be granted.¹

¹ See *Simmonds v. Cockrell*, Civ. Action No. H:02cv4453 (S.D.-Tex., Feb. 20, 2003); *Simmonds v. Abbott*, Civ. Action No. H:04cv526 (S.D.-Tex., Apr. 6, 2004); *Simmonds v. U.S.Court of Appeals*, Civ. Action No.2:04cv3000 (E.D. La. Nov. 19, 2004).

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g).
Any pending motions are further DENIED.

The Clerk will provide a copy of this Order to all parties, to the TDCJ - Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711, Fax 512-936-2159; and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Betty Parker.

SIGNED at Houston, Texas, on January 4, 2006.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE